

Surface Transportation Board, DOT

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(5) Issue orders by the Director in an emergency under 49 U.S.C. 11123 and 11124 if no Board Member is reasonably available.

[75 FR 30711, June 2, 2010, as amended at 78 FR 29079, May 17, 2013]

PART 1012—MEETINGS OF THE BOARD

Sec.

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AUTHORITY: 5 U.S.C. 552b(g), 49 U.S.C. 701, 721.

SOURCE: 42 FR 13796, Mar. 11, 1977, unless otherwise noted.

§ 1012.1 General provisions.

(a) The regulations contained in this part are issued pursuant to the provisions of 5 U.S.C. 552b(g), added by section 3(a) of the Government in the Sunshine Act, Pub. L. 94-409 (Act), and section 17(3) of the Interstate Commerce Act. They establish procedures under which meetings of the Surface Transportation Board (Board) are held. They apply to oral arguments as well as to deliberative conferences. They apply to meetings of the Board. They include provisions for giving advance public notice of meetings, for holding meetings which may lawfully be closed to the public, and for issuing minutes and transcripts of meetings.

(b) The words *meeting* and *conference* are used interchangeably in this part to mean the deliberations of at least a majority of the members of the Board, where such deliberations determine or result in the joint conduct or disposition of official Board business. They do not include meetings held to determine whether some future meeting should be open or closed to the public. They do not include the deliberations of members of boards of employees of the Board.

(c) These regulations are not intended to govern situations in which members of the Board consider individ-

ually and vote by notation upon matters which are circulated to them in writing. Copies of the votes or statements of position of all Board Members eligible to participate in action taken by notation voting will be made available, as soon as possible after the date upon which the action taken is made public or any decision or order adopted is served, in a public reading room or other easily accessible place within the Board, or upon written request to the Records Officer.

[42 FR 13796, Mar. 11, 1977, as amended at 64 FR 53266, 53267, Oct. 1, 1999; 74 FR 52905, Oct. 15, 2009]

§ 1012.2 Time and place of meetings.

(a) Conferences, oral arguments, and other meetings are held at the Board's offices located at 1925 K Street, NW, Washington, DC, unless advance notice of an alternative site is given. Room assignments will be posted at the Board on the day of the meeting.

(b) Regular Board conferences are held on the first and third Tuesdays of each month, or on the following day if the regular conference day is a holiday. Oral arguments before the Board are normally scheduled on the first or third Wednesday of each month. Regular Board conferences and oral arguments before the Board normally begin at 9:30 a.m. A luncheon recess is taken at approximately noon, and other recesses may be called by the presiding officer. Times for reconvening following a recess, or on subsequent days if a conference or oral argument lasts more than one day, are set by the presiding officer at the time the recess is announced.

(c) Special Board conferences or oral arguments are scheduled by the Chairman of the Board.

(d) If one or more portions of the same meeting are open to the public while another portion or other portions are closed, all those portions of the meeting which are open to the public are scheduled at the beginning of the meeting agenda, and are followed by those portions which are closed.

[42 FR 13796, Mar. 11, 1977, as amended at 64 FR 53267, Oct. 1, 1999]

§ 1012.3 Public notice.

(a) Unless a majority of the Board determines that such information is exempt from disclosure under the Act, public notice of the scheduling of a meeting will be given by filing a copy of the notice with the Clearance Clerk of the Board for posting and for service on all parties of record in any proceeding which is the subject of the meeting or any other person who has requested notice with respect to meetings of the Board, and by submitting a copy of the notice for publication in the FEDERAL REGISTER.

(b) Public notice of a scheduled meeting will contain:

(1) The date, time, place, and subject matter of the meeting.

(2) Whether it is open to the public.

(3) If the meeting or any portion of the meeting is not open to the public, an explanation of the action taken in closing the meeting or portion of the meeting, together with a list of those expected to attend the meeting and their affiliations.

(4) If a vote is taken on the question of whether to close a meeting or a portion of a meeting to the public, a statement of the vote or position of each Board Member eligible to participate in that vote. If such a vote is taken, public notice of its result will be posted within one working day following completion of the voting. If the result of the vote is to close the meeting or a portion of the meeting, an explanation of that action will be included in the notice to be issued within one working day following completion of the voting. The public notice otherwise required by this subparagraph may be withheld if the Board finds that such information is exempt from disclosure under the Act.

(5) The name and telephone number of the Board official designated to respond to requests for information about the meeting. Unless otherwise specified, that official will be the Board's Public Information Officer, whose telephone number is (202) 275-7252.

(c) Except as provided in paragraphs (d) and (e) of this section, public notice will be given at least one week before the date upon which a meeting is scheduled.

(d) Due and timely execution of the Board's functions will not normally permit the giving of one week's public notice of meetings called to consider or determine whether to suspend or investigate a tariff or schedule under sections 15(7), 15(8), 215(g), 218(c), 307(g), 307(i), or 406(e) of the Interstate Commerce Act (49 U.S.C. 15(7), 15(8), 316(g), 318(c), 907(g), 907(i), 1006(e)); to consider whether to grant special permission to deviate from tariff filing requirements under section 6(3), 217(c), 218(a), 306(d), 306(e), or 405(d) of the Interstate Commerce Act (49 U.S.C. 6(3), 317(c), 318(a), 906(d), 906(e), or 1005(d)); or to consider or dispose of an application for temporary authority under section 210a(a) or 311(a) of the Interstate Commerce Act (49 U.S.C. 310a(a) or 911(a)). Such meetings will normally be called on less than one week's notice, and public notice will be posted and published at the earliest practicable time.

(e) If a majority of the Board Members eligible to participate in the conduct or disposition of the matter which is the subject of a meeting determines, by recorded vote, that Board business requires that a meeting be called on less than one week's notice, the meeting may be called on short notice, and public notice will be posted and published at the earliest practicable time.

(f) Changes in the scheduling of a meeting which has been the subject of a public notice will also be made the subject of a public notice, which will be posted at the earliest practicable time. Changes in, or additions to a conference agenda or in the open or closed status of a meeting will be made only if a majority of the Board Members eligible to participate in the conduct or disposition of the matter which is the subject of the meeting determines, by recorded vote, that the Board's business requires such change and that no earlier announcement of the change was possible. In such a case, the public notice of the change, will show the vote of each Board Member on the change.

[42 FR 13796, Mar. 11, 1977, as amended at 64 FR 53267, Oct. 1, 1999; 74 FR 52905, Oct. 15, 2009]

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§ 1012.4 Public participation.

(a) In the case of Board or Division conferences or meetings of committees of the public, members of the public will be admitted as observers only. Active participation, as by asking questions or attempting to participate in the discussion, will not be permitted, and anyone violating this proscription may be required to leave the meeting by the presiding officer.

(b) Oral arguments are always open to the public. The scheduling of participants in the arguments and the allotment of time is governed by 49 CFR part 1116.

[42 FR 13796, Mar. 11, 1977, as amended at 47 FR 49596 and 49597, Nov. 1, 1982; 47 FR 54083, Dec. 1, 1982; 47 FR 55686, Dec. 13, 1982; 57 FR 44135, Sept. 24, 1992]

§ 1012.5 Transcripts; minutes.

(a) A verbatim transcript, sound recording or minutes will be made of all meetings closed to the public under these regulation, and will be retained by the Board for two years following the date upon which the meeting ended, or until one year after the conclusion of any proceeding with respect to which the meeting was held, whichever occurs later. In the case of meetings closed to the public under § 1012.7(d) (1) through (7) and (9) of this part, a transcript or recording rather than minutes will be made and retained.

(b) The Board will make available free of charge, upon request, in a public reading room or some other easily accessible place, the minutes, transcript or recording of all portions of any meeting which was closed to the public except those portions which it finds to be properly exempt from disclosure under the Act. A copy of such minutes, transcript or recording will be provided, upon request, upon payment of fees as provided in part 1002 of this chapter.

(c) In the case of all meetings closed to the public, the presiding officer shall cause to be made, and the Board shall retain, a statement setting forth:

(1) The date, time, and place of the meeting.

(2) The names and affiliations of those attending.

(3) The subject matter.

(4) The action taken.

(5) A copy of the certification issued by the General Counsel that, in his or her opinion, the meeting was one that might properly be closed to the public.

§ 1012.6 Petitions seeking to open or close a meeting.

(a) The Board will entertain petitions requesting either the opening of a meeting proposed to be closed to the public or the closing of a meeting proposed to be open to the public. In the case of a meeting of the Board, the original and 15 copies of such a petition shall be filed, and in the case of a meeting of a Division or committee of the Board, an original and five copies shall be filed.

(b) A petition to open a meeting proposed to be closed, filed by any interested person, will be entertained.

(c) A petition to close a meeting proposed to be open will be entertained only in cases in which the subject at the meeting would:

(1) Involve accusing a person of a crime or formally censuring a person.

(2) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(3) Disclose trade secrets or commercial or financial information obtained on a privileged or confidential basis.

(4) Disclose investigatory records or information, compiled for law enforcement purposes, to the extent that the production of such records or information would (i) interfere with enforcement proceedings being conducted or under consideration by an agency other than the Board; (ii) deprive a person of a right to a fair trial or an impartial adjudication; (iii) constitute an unwarranted invasion of personal privacy; (iv) disclose the identity of a confidential investigation agency or a national security intelligence agency; (v) disclose investigative techniques and procedures of an agency other than the Board; or (vi) endanger the life or physical safety of law enforcement personnel.

(5) Disclose information the premature disclosure of which could lead to significant financial speculation in securities.

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(d) Every effort will be made to dispose of petitions to open or close a meeting in advance of the meeting date. However, if such a petition is received less than three working days prior to the date of the meeting, it may be disposed of as the first order of business at the meeting, in which case the decision will be communicated to the petitioner orally through the Board's Public Information Officer or other spokesperson.

§ 1012.7 Meetings which may be closed to the public.

(a) A meeting may be closed pursuant to this section only if a majority of the Board Members eligible to participate in the conduct or disposition of the matter which is the subject of the meeting votes to close the meeting.

(b) A single vote may be taken to close a series of meetings on the same particular matters held within 30 days of the initial meeting in the series.

(c) With respect to any meeting closed to the public under this section, the General Counsel of the Board will issue his or her certification that, in his opinion, the meeting is one which may properly be closed pursuant to one or more of the provisions of paragraph (d) of this section.

(d) Meetings or portions of meetings may be closed to the public if the meeting or portion thereof is likely to:

(1) Disclose matters (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order.

(2) Relate solely to the internal personnel rules and practices of the Board.

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552); *Provided*, That such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets or commercial information obtained from a person and privileged or confidential.

(5) Involve accusing any person of a crime, or formally censuring any person.

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and (in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation) disclose confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(8) Disclose information the premature disclosure of which could (i) lead to significant financial speculation in currencies, securities, or commodities, or (ii) significantly endanger the stability of any financial institution.

(9) Disclose information, the premature disclosure of which would be likely significantly to frustrate implementation of a proposed Board action, except that this subparagraph shall not apply in any instance after the content or nature of the proposed Board action has already been disclosed to the public by the Board, or where the Board is required by law to make such disclosure prior to the taking of final Board action on such proposal.

(10) Specifically concern the issuance of a subpoena.

(11) Specifically concern the Board's participation in a civil action or proceeding or an arbitration.

(12) Specifically concern the initiation, conduct, or disposition of a particular case or formal adjudication conducted pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a

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determination on the record after an opportunity for hearing.

PART 1013—GUIDELINES FOR THE PROPER USE OF VOTING TRUSTS

Sec.

1013.1 The independence of the trustee of a voting trust.

1013.2 The irrevocability of the trust.

1013.3 Review and reporting requirements for regulated carriers.

AUTHORITY: 49 U.S.C. 721, 13301(f).

SOURCE: 44 FR 59909, Oct. 17, 1979, unless otherwise noted.

§ 1013.1 The independence of the trustee of a voting trust.

(a) In order to avoid an unlawful control violation, the independent voting trust should be established before a controlling block of voting securities is purchased.

(b) In voting the trustee stock, the trustee should maintain complete independence from the creator of the trust (the settlor).

(c) Neither the trustee, the settlor, nor their respective affiliates should have any officers or board members in common or direct business arrangements, other than the voting trust, that could be construed as creating an indicium of control by the settlor over the trustee.

(d) The trustee should not use the voting power of the trust in any way which would create any dependence or intercorporate relationship between the settlor and the carrier whose corporate securities constitute the corpus of the trust.

(e) The trustee should be entitled to receive cash dividends declared and paid upon the trustee voting stock and turn them over to the settlor. Dividends other than cash should be received and held by the trustee upon the same terms and conditions as the stock which constitutes the corpus of the trust.

(f) If the trustee becomes disqualified because of a violation of the trust agreement or if the trustee resigns, the settlor should appoint a successor trustee within 15 days.

§ 1013.2 The irrevocability of the trust.

(a) The trust and the nomination of the trustee during the term of the trust should be irrevocable.

(b) The trust should remain in effect until certain events, specified in the trust, occur. For example, the trust might remain in effect until (1) all the deposited stock is sold to a person not affiliated with the settlor or (2) the trustee receives a Board decision authorizing the settlor to acquire control of the carrier or authorizing the release of the securities for any reason.

(c) The settlor should not be able to control the events terminating the trust except by filing with this Board an application to control the carrier whose stock is held in trust.

(d) The trust agreement should contain provisions to ensure that no violations of 49 U.S.C. 11343 will result from termination of the trust.

§ 1013.3 Review and reporting requirements for regulated carriers.

(a) Any carrier choosing to utilize a voting trust may voluntarily submit a copy of the voting trust to the Board for review. The Board's staff will give an informal, nonbinding opinion as to whether the voting trust effectively insulates the settlor from any violation of Board policy against unauthorized acquisition of control of a regulated carrier.

(b) Any person who establishes an independent trust for the receipt of the voting stock of carrier must file a copy of the trust, along with any auxiliary or modifying documents, with the Board.

(c) Any carrier required to file a Schedule 13D with the Securities and Exchange Board (17 CFR 240.13d-1) which reports the purchase of 5 percent or more of the registered securities of another I.C.C. regulated carrier (or the listed shares of a company controlling 10 percent or more of the stock of an I.C.C. regulated carrier), must simultaneously file a copy of that schedule with this Board, along with any supplements to that schedule.

(d) Failure to comply with the reporting requirements in paragraphs (b)